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Dealing with debt: a consumer's guide



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Dealing with debt:

a consumer's guide





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Introduction

Many Canadians will face a financial crisis at some time. Many debt problems are easy to solve. Others need professional assistance. The best way to deal with your financial problems is to admit them and get control before they get out of hand.

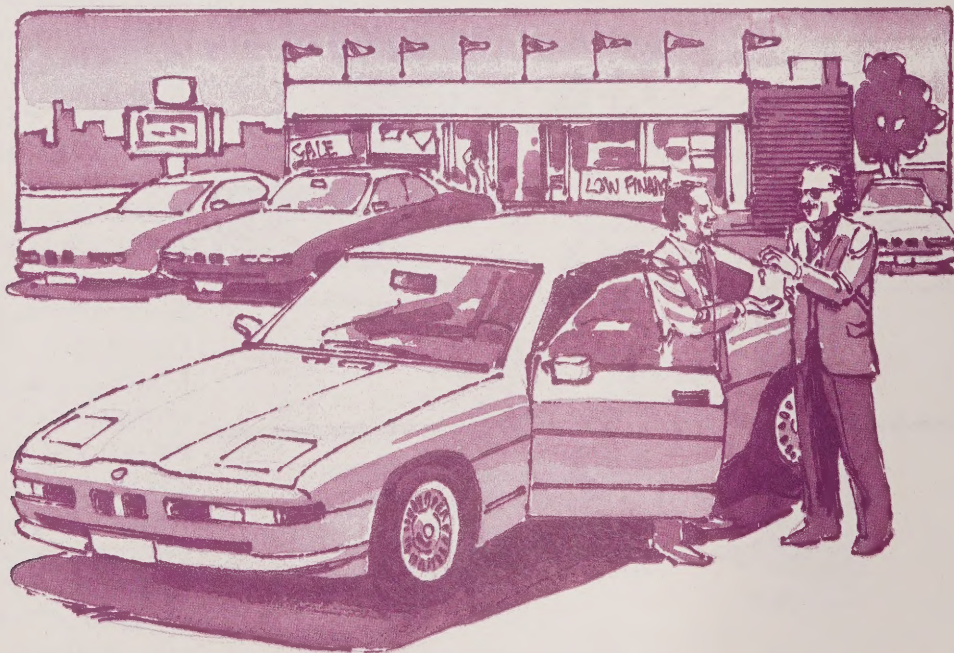
This booklet may help you decide whether or not you have a serious debt problem. It also gives some suggestions for solving your difficulties and avoiding them in the future. The information in this booklet is meant for individuals only and does not apply to corporations that are in financial difficulty.

Readers are reminded that this booklet is not meant to be used for legal purposes. Its only aim is to give information to individuals who are having financial difficulties.

Recognize the danger signals

You have a debt problem, or are going to have one, if:

- you continually go over your spending limit or you use your credit cards as a necessity rather than a convenience;
- you are always borrowing money to make it from one payday to the next;
- your wages have been garnisheed to pay for outstanding debts;
- you pay only interest or service charges monthly and do not reduce your total debt over many months;
- creditors harass you for payment, threaten to sue or repossess your car, furniture or television, or hire a collection agency to recover the money for them; or
- utility companies cut off service because your bills have gone unpaid.



Possible solutions

Contact your creditors

Explain why you can't make your payments and suggest making lower payments over a longer period of time. You may be surprised but many creditors are willing to accept such arrangements.

Credit counselling

Credit counselling services are available, but may be different from province to province. Contact a local family or community counselling

office or association to find out how to get in touch with such a service. If you have difficulty making a budget and sticking to it, counselling may help you.

Debt consolidation loan

You can ask a bank or financial institution about combining or "consolidating" your debts into one loan. In such a case, the bank or financial institution will pay off all your debts and, in return, you make monthly payments to that creditor. Make sure to shop around because interest rates are different. It is important to stop buying on credit. Continuing to use credit could make your debt load too great for you to handle.

Consolidation Order

If you live in British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia or Prince Edward Island you may apply for a Consolidation Order. A Consolidation Order sets out the amount and the times when payments are due to the court. The court will distribute your payments to your creditors. This part of the *Bankruptcy and Insolvency Act* (Part X: Orderly Payments of Debts) lets you pay off your debts over three years



and frees you from creditor harassment and wage garnishment. Unlike bankruptcy, you do not lose your assets.

Voluntary Deposit scheme

For residents of Quebec, the Voluntary Deposit scheme (better known as the “Lacombe Law”) is similar to a Consolidation Order. You must make a monthly payment based on your income and number of dependents, to the court. This service is usually available at the local courthouse.

Consumer proposal

Under the *Bankruptcy and Insolvency Act* you may make a proposal to your creditors to reduce the amount of your debts, extend the time you have to pay off the debt, or provide some combination of both. Proposals are explained in more detail on page 12.

Bankruptcy

If none of the above methods solves your debt problem, you may choose to consider bankruptcy. Bankruptcy should be a last alternative if you cannot meet your financial responsibilities through affordable payments over a specific period of time.

Bankruptcy is a legal process performed under the *Bankruptcy and Insolvency Act*. Because of your inability to pay your debts, you assign all of your assets, except those exempt by law, to a licensed trustee in bankruptcy. This process relieves you of most debts, and legal proceedings against you by creditors should stop. Bankruptcy is explained in more detail on page 14.

What you should know

Administrator of consumer proposals

An administrator is a trustee in bankruptcy or a person appointed by the Superintendent of Bankruptcy to administer consumer proposals. Certain provinces may provide this service. You may wish to contact the appropriate provincial department.

Assets and property

In a bankruptcy, you must assign all your assets to the trustee, except for exempt property (such as basic furniture and tools-of-trade) which will vary from province to province. Your trustee can tell you what these are.

Bankrupt

This is the legal status of a person who declares bankruptcy.

Bankruptcy and Insolvency Act (the Act)

This is a federal law which regulates business and consumer proposals and bankruptcies in Canada. It falls under the responsibility of the Bankruptcy Branch of Industry Canada.

Bankruptcy Court

This is a court in which a judge or registrar will decide on the bankrupt's application for discharge and other insolvency matters.

Co-signers

Your bankruptcy does not cancel the responsibility of anyone who has guaranteed or co-signed a loan on your behalf.

Creditor

A creditor is a person, institution or business to whom money is owed.

Secured creditors are creditors who have taken some measure to protect themselves and hold a mortgage, pledge, lien or similar instrument on, or against, the property of the debtor. If they are not paid, they can enforce their claims by recovering the assets on which they hold security.

Unsecured creditors are creditors who do not have any security for the debt owing to them.

Credit rating

Your bankruptcy is a matter of public record and is available to any interested party (such as a credit reporting agency). To obtain credit after your discharge you may have to demonstrate to the potential lender that you have sufficient income and the ability to handle a reasonable level of debt.

Debtor

A debtor is a person who receives a loan or an advance of goods and services in exchange for a promise to pay at a later date.

Harassment

One of the objectives of the Act is to relieve you of pressure from your creditors. If you receive phone calls or letters from creditors, tell them that you are bankrupt, or have made

a proposal, and refer them to your trustee or administrator.

Income tax returns

Two income tax returns must be completed for the year in which you become bankrupt. The pre-bankruptcy return covers the period from the beginning of the year to the date of your bankruptcy. The post-bankruptcy return covers the period from the date of bankruptcy to the end of the calendar year. Provide your trustee details and documentation to support these returns.

Assessment notices and refunds due to the bankrupt from the pre-bankruptcy return are estate assets and are mailed directly to the trustee.

You may be asked to give any possible refund from your post-bankruptcy return to the trustee for distribution to your creditors. The trustee or a creditor may apply for a court order in this respect or it may be reported to the court at the time of your discharge.

Inspector

Inspectors are appointed by creditors to represent them during the administration of proposals and bankruptcies.

Insolvent person

A person who is unable to meet financial obligations as they become due is insolvent.

Legal action

Although legal actions or most garnishments against you stop on the date you declare bankruptcy or file a proposal, criminal actions and some civil matters, such as actions in matrimonial matters, are not affected by the bankruptcy or proposal. Give the trustee or administrator copies of all legal documents that you have received before and after the date you became bankrupt, or filed a proposal.

Official Receiver

The Official Receiver is a federal government employee and officer of the court with specific duties under the *Bankruptcy and Insolvency Act*. The Official Receiver, among other things, accepts the documents that are filed in proposals and bankruptcies, examines bankrupts under oath and chairs meetings of creditors.

Payments

Immediately after becoming bankrupt, you should no longer be required to make payments to your creditors. However, while you are an undischarged bankrupt, you are expected to deposit a portion of your income with your trustee for distribution to your creditors. These payments are made according to guidelines issued by the Superintendent of Bankruptcy. If you fail to make these payments voluntarily, the court may order that you do so, or your discharge may be affected.

Superintendent of Bankruptcy

The Superintendent of Bankruptcy is a federally appointed official who oversees the administration of the *Bankruptcy and Insolvency Act* in Canada.

Trustee in bankruptcy

A trustee in bankruptcy is a person licensed by the Superintendent of Bankruptcy to administer proposals and bankruptcies. The trustee represents your creditors and is an officer of the court. However, the

trustee can give you information and advice about both the proposal and bankruptcy processes and make sure that your rights, as well as those of the creditors, are respected.

Windfalls

You must give all windfalls, such as lottery winnings and inheritances, occurring during the period of your bankruptcy, to the trustee for distribution to your creditors.

Where to go

If you decide that you would like more information and that you wish to make a consumer proposal to your creditors, you should contact an administrator. If you decide to declare bankruptcy, you should contact a trustee in bankruptcy. The names of trustees and administrators in your area are usually listed in the telephone book under “Bankruptcy” or “Trustee” or “provincial government services.” If you cannot secure the services of a trustee, contact the nearest Bankruptcy Branch office of Industry Canada.

Counselling

Should you decide to make a consumer proposal or declare bankruptcy, you will receive counselling in accordance with directives issued by the Superintendent of Bankruptcy. This is required by the *Bankruptcy and Insolvency Act*. The first counselling session will be an assessment of your financial situation, a discussion of your problems and possible options, and a review of your rights and

responsibilities. The second counselling session will help you discover and understand the causes of your insolvency which, in some instances, may be non-budgetary, and look at possible remedies. You must attend these two sessions. If you feel that you need additional help or assistance, a third counselling session is available, if you request it.



Consumer proposal

What is a consumer proposal?

A consumer proposal is an offer made by a debtor to his or her creditors to modify your payments. For example, you may propose that you will pay a lower amount each month, but over a longer period of time. Or you may propose that your creditors accept being paid a percentage of what you owe.

What are the benefits to a debtor of a consumer proposal?

Your unsecured creditors will not be able to take legal steps to recover their debts from you (such as seizing property or garnishing wages) unless or until the proposal is rejected or annulled.

Who can make a consumer proposal?

An insolvent person whose debts are less than \$75,000, excluding the home mortgage, can make a

consumer proposal. Insolvent persons with debts in excess of that amount may qualify to make a proposal under Division I of Part III of the Act.

How does someone make a proposal? What is the process?

The procedure begins when you seek the help of an administrator who might be a



trustee in bankruptcy or a person appointed by the Superintendent of Bankruptcy. He or she will ask you about your financial situation and give you advice about what kind of a proposal may be best for you and your creditors. The administrator will ask you to sign the required forms which will then be filed with the Official Receiver.

What happens after a proposal is filed with the Official Receiver?

Within 10 days after filing your proposal with the Official Receiver, the administrator is required to send the Official Receiver a report. The report contains the administrator's opinion about whether the proposal is fair and reasonable and whether he or she believes you will be able to perform it. It also contains a list of your assets and debts, and a list of your creditors.

At the same time, the administrator must send to each of your creditors a copy of your proposal and a copy of the report on the proposal. The administrator will ask the creditors to accept or reject the proposal. The administrator will also provide information about calling a meeting of creditors.

How does a proposal get accepted?

Your creditors will have up to 30 days to consider your proposal and

whether to accept or reject it. A creditor may send a note to the administrator accepting or rejecting the proposal. If creditors do not respond, they will be considered to have accepted the proposal. If a sufficient number of creditors accept the proposal, then it will become binding on you and your creditors, and you will have to meet its terms.

What happens if the proposal is rejected?

If the proposal is rejected, you will no longer be protected by the Act and your creditors will thereafter be able to take legal steps to recover their debts from you.

What if my proposal is accepted, and I fully meet the terms?

When the proposal is fully performed, the administrator must give a certificate of full performance to you and the Official Receiver and you will be relieved of the debts that were in the proposal.

What if I stop making the payments and default on the performance of the proposal?

If you fail to keep the terms of your proposal, it may be annulled. Then your creditors would have a claim against you for the amount owed to them before the proposal, minus any amount you paid them during the proposal.

Does it cost anything to make a proposal?

Yes. There is a filing fee to be paid to the Superintendent of Bankruptcy. In addition, the administrator is entitled to be paid. These fees are prescribed in the *Bankruptcy and Insolvency Rules*.

Bankruptcy

What is bankruptcy and what are the benefits to the debtor?

Bankruptcy is a legal process, regulated by the Act, by which you may be discharged from most of your debts. The purpose of the Act is to permit an honest, but unfortunate, debtor to obtain a discharge from his or her debts, subject to reasonable conditions.

When you declare bankruptcy, your property is given to a trustee in bankruptcy who then sells it and distributes the money among your creditors. When you declare bankruptcy, your unsecured creditors will not be able to take legal steps to recover their debts from you (such as seizing



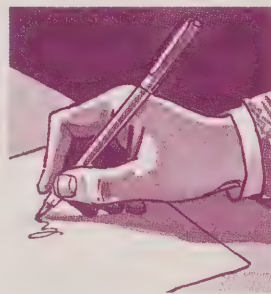
property, garnishing wages or harassing you).

How does one become bankrupt?

First, should speak with a trustee in bankruptcy about your situation and the trustee should provide you with financial counselling as described earlier. If you decide to become bankrupt, the trustee will help you complete several forms which you will have to sign. You are considered a bankrupt only when the trustee files these forms with the Official Receiver.

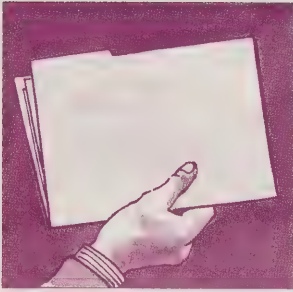
What kind of forms will I have to sign?

You will have to sign at least two forms. One is an "Assignment," and



the other is your "Statement of Affairs." In the assignment you state that you are handing

over all of your property to the trustee for the benefit of your creditors. In the statement of affairs you list your assets, liabilities, current income and expenses, as well as answer several questions about your family, employment and recent dispositions of assets.



Before you sign them, make sure you understand the legal documents that are part of

your bankruptcy file. Although the trustee prepares them from the information you provide, they are your statements. You are responsible for the accuracy of their contents. Review them carefully before you sign. Once these documents have been filed with the Official Receiver, you are legally bankrupt and, at this point, the process cannot be reversed without a court order. Keep copies of notices and all other documents the trustee sends you.

What happens after the forms are filed with the Official Receiver and I become bankrupt?



After the forms are filed, there will be a meeting of creditors within 21 days of the date of bankruptcy.

You must

attend this meeting. You may also be required to go to the office of the Official Receiver to answer several

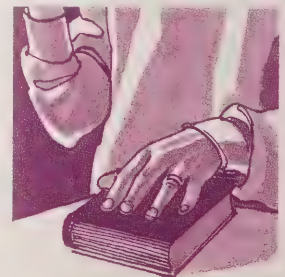
questions under oath about your financial affairs. Note that once you are legally a bankrupt, you are required to perform the duties of bankrupts as outlined in Appendix I which begins on page 18. The trustee will inform you of these duties.

What happens at the first meeting of creditors?

At the meeting the trustee will give a report about your assets and liabilities and creditors may ask you related questions. The creditors will then have an opportunity to vote and either confirm the trustee's appointment, or substitute a trustee of their choice. The creditors will then have an opportunity to vote for the appointment of inspectors. They may also give directions to the trustee with reference to the administration of the estate.

What does the examination with the Official Receiver involve?

The Official Receiver may send you a notice instructing you to appear before him or her for an examination under oath. The Official Receiver will then ask you a number of questions about the causes of your bankruptcy, your conduct, the disposition of your property, and the nature of your debts.



When is a bankrupt discharged?

There will be an automatic discharge for first-time bankrupts nine months after they became bankrupt unless it is opposed by a creditor or the trustee or the Superintendent of Bankruptcy. If an opposition is filed, the trustee will have to obtain a date for a court hearing. The party who opposes the discharge will have to give their reasons to a court official who will make a decision. It should be noted that a first-time individual bankrupt who refuses or neglects to receive the required counselling sessions will not qualify for an automatic discharge.

For those who have already been bankrupt before or who do not qualify for the automatic discharge, the trustee is required within one year from the beginning of the bankruptcy to apply to the court for a hearing of the application for a discharge. The court official has several options from which to choose.

What kind of discharge orders can a judge or registrar issue?



At a hearing for a discharge the court decides whether to postpone the hearing to a later date, refuse the

discharge, or issue any of the following orders:

(i) **Order of Absolute Discharge**

This official document relieves you of the debts incurred before you declared bankruptcy taking under consideration the exceptions provided in the Act.

(ii) **Order of Conditional Discharge**

The court may impose certain conditions that must be met before your discharge becomes absolute. For example, you may be asked to pay an amount to your trustee for distribution to your creditors.

(iii) **Order of Suspended Discharge**

The court orders a delay so that the discharge will not be effective until a certain date.

Your discharge may be delayed by:

- an objection by a creditor
- an objection by the trustee or Superintendent
- an ongoing criminal investigation or
- a breach of your duties as specified in the *Bankruptcy and Insolvency Act*.

What is the effect of a bankruptcy discharge?

The bankrupt is released of most debts. However, some debts are not released, such as alimony, spousal or child support, debt arising out of fraud or any court fine.

How does bankruptcy affect employment?

For the most part, bankruptcy should not affect your employment. There are some special cases. For example, you may have difficulty being bonded. Your trustee will be able to give you more information on other possible restrictions or prohibitions.

Does it cost anything to go bankrupt?

Yes. There is a filing fee to be paid to the Superintendent of Bankruptcy. In addition, the trustee is entitled to be paid. These fees are prescribed in the *Bankruptcy and Insolvency Rules*.

Appendix I

Excerpts from the *Bankruptcy and Insolvency Act* concerning bankruptcies

Duties of bankrupt

Section 158

A bankrupt shall

(a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;

(a.1) in such circumstances as are specified in directives of the Superintendent, deliver to the trustee, for cancellation, all credit cards issued to and in the possession or control of the bankrupt;

(b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;

(c) at such time and place as may be fixed by the official receiver, attend before the official receiver or before any other official receiver delegated by the official receiver for examination under oath with respect to his conduct, the causes of his bankruptcy and the disposition of his property;

(d) within seven days following his bankruptcy, unless the time is

extended by the official receiver, prepare and submit to the trustee in quadruplicate a statement of his affairs in the prescribed form verified by affidavit and showing the particulars of his assets and liabilities, the names and addresses of his creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that he cannot himself reasonably prepare a proper statement of his affairs, the official receiver may, as an expense of the administration of the estate, authorize the employment of a qualified person to assist in the preparation of the statement;

(e) make or give all the assistance within his power to the trustee in making an inventory of his assets;

(f) make disclosure to the trustee of all property disposed of within one year preceding his bankruptcy, or for such further antecedent period as the court may direct, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

- (g) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within five years preceding his bankruptcy;
- (h) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and submit thereat to examination;
- (i) when required, attend other meetings of his creditors or of the inspectors, or attend on the trustee;
- (j) submit to such other examinations under oath with respect to his property or affairs as required;
- (k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;
- (l) execute such powers of attorney, conveyances, deeds and instruments as may be required;
- (m) examine the correctness of all proofs of claims filed, if required by the trustee;
- (n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;
- (o) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably

required by the trustee, or may be prescribed by the General Rules, or may be directed by the court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested; and

- (p) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all times of his place of residence or address.

Bankruptcy offences

Section 198

Any bankrupt who

- (a) fails, without reasonable cause, to do any of the things required of him under section 158,
- (b) makes any fraudulent disposition of his property before or after bankruptcy,
- (c) refuses or neglects to answer fully and truthfully all proper questions put to him at any examination held pursuant to this Act,
- (d) makes a false entry or knowingly makes a material omission in a statement or accounting,
- (e) after or within the twelve months immediately preceding his bankruptcy, conceals, destroys, mutilates, falsifies,

- makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs,
- (f) after or within the twelve months immediately preceding his bankruptcy, obtains any credit or any property by false representations made by him or made by any other person to his knowledge,
 - (g) after or within the twelve months immediately preceding his bankruptcy, fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from him, or
 - (h) after or within the twelve months immediately preceding his bankruptcy, pawns, pledges or disposes of any property that he has obtained on credit and has not paid for, unless in the case of a trader the pawning, pledging or disposing is in the ordinary way of trade and unless in any case he proves that he had no intent to defraud,

is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both, or is guilty of an indictable offence and is liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years or to both.

Failure to disclose fact of being undischarged

Section 199

An undischarged bankrupt who

- (a) engages in any trade or business without disclosing to all persons with whom the undischarged bankrupt enters into any business transaction that the undischarged bankrupt is an undischarged bankrupt, or
- (b) obtains credit to a total of five hundred dollars or more from any person or persons without informing such persons that the undischarged bankrupt is an undischarged bankrupt, is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

